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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-766

DONALD WALLACE, *et al.*,

Petitioners,

v.

MICHAEL KERN, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
STATUTORY PROVISIONS INVOLVED	2
CONSTITUTIONAL PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT:	
I. The Court of Appeals erred in holding that *Barker v. Wingo* bars a class action by pretrial detainees suffering from excessive periods of pretrial detention	8
II. The excessive periods of pretrial incarceration suffered by petitioners deprive them of due process of law	11
III. This case raises crucial questions about the realization of the rights to speedy trial and due process for indigent criminal defendants in an urban judicial system. If the District Court cannot fashion prospective relief to prevent the wholesale denial of Sixth and Fourteenth Amendment rights, petitioners will be left without a meaningful remedy	13
CONCLUSION	19

APPENDICES: Page

Opinion of the Court of Appeals 1a

Order on Preliminary Injunction 13a

Memorandum of the United States District Court (March 7, 1974) 18a

CITATIONS

Cases:

Baldwin v. New York, 399 U.S. 66 (1970) 12

Barker v. Wingo, 407 U.S. 514 (1972) 6, 7, 8, 14, 15, 18

Bellamy v. Judges, 41 App. Div.2d 196 (1st Dept.), aff'd., 32 N.Y.2d 886 (1973) 16

Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484 (1973) 10

Bramlett v. Paterson, 307 F. Supp. 1311 (M.D. Fla., 1969) 18

Brenneman v. Madigan, 343 F. Supp. 128 (N.D. Cal., 1972) 12

Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974) 11

Conover v. Montemuro, 477 F.2d 1073 (3d Cir. 1973) *(en banc)* 18

Dunn v. Blumstein, 405 U.S. 330 (1972) 11

Page

Gilliard v. Carson,
348 F. Supp. 757 (M.D. Fla., 1972) 18

Green v. City of Tampa,
335 F. Supp. 293 (M.D. Fla., 1971) 18

Hamilton v. Love,
328 F. Supp. 1182 (E.D. Ark., 1971) 12

Inmates of Milwaukee County Jail v. Peterson,
353 F. Supp. 1157 (D. Wisc., 1973) 12

Inmates of Suffolk County Jail v. Eisenstadt,
494 F.2d 1194 (1st Cir. 1974) 12

Jones v. Metzger,
456 F.2d 854 (6th Cir. 1974) 12

Klopfer v. North Carolina,
386 U.S. 213 (1967) 10

Landman v. Royster,
333 F. Supp. 621 (E.D. Va., 1971) 12

Long v. Robinson,
436 F.2d 1116 (4th Cir. 1971) 18

People *ex rel.* Franklin v. Warden,
31 N.Y.2d 498, 341 N.Y.S.2d 604,
294 N.E.2d 199 (1973) 7, 16

Penn v. Eubanks,
360 F. Supp. 699 (M.D. Ala., 1973) 18

Pugh v. Rainwater,
483 F.2d 778 (5th Cir. 1973), cert. granted,
sub nom., Gerstein v. Pugh, 94 S. Ct. 595 (1973) . . 17-18

Page

Rhem v. Malcolm,
__F.2d __ (No. 74-2072) (2d Cir., Nov. 8, 1974) . . 12, 15

Shelton v. Tucker,
364 U.S. 479 (1960) 11

Smith v. Hooey,
393 U.S. 374 (1969) 9, 10

Stack v. Boyle,
343 U.S. 1 (1951) 12

Strunk v. United States,
412 U.S. 434 (1973) 9

Swann v. Charlotte-Mecklenburg Board of Education,
402 U.S. 1 (1971) 10

Thorne v. Warden,
479 F.2d 297 (2d Cir. 1973) 15

United States v. Ewell,
383 U.S. 116 (1966) 9

United States v. Marion,
404 U.S. 307 (1971) 14

United States v. Thompson,
452 F.2d 1333 (D.C. Cir. 1971), cert. denied,
405 U.S. 998 (1972) 11

United States ex. rel. Frizer v. McMann,
437 F.2d 1312 (2nd Cir., *en banc* 1971) 15-16

Wallace v. Kern,
369 F. Supp. 180 (E.D.N.Y. 1973) 4

Page

Wallace v. Kern,
481 F.2d 621 (2nd Cir. 1973), cert. denied,
414 U.S. 1135 (1974) 5

Wallace v. Kern,
371 F. Supp. 1384 (E.D.N.Y. 1974) 6, 10, 11, 15

Wallace v. Kern,
499 F.2d 1345 (2nd Cir. 1974) . . 5, 6, 8, 9, 11, 16, 17

Constitutional Provision:

United States Constitution
Sixth Amendment 3, 9, 10, 13, 18
Fourteenth Amendment 4, 13, 18

Statutes:

CPL §30.30 . . . . . 2, 7
F.R. Civ. P. 23(b)(2) 3, 10
28 U.S.C. §1343 4
42 U.S.C. §1983 . . . . . 2, 3, 4

Bills:

H.R. 17409 13

S. 754 13

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioners Donald Wallace, *et al.*, acting on behalf of themselves and all others similarly situated, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in this proceeding on July 8, 1974.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 499 F.2d 1345 and appears in the Appendix, *infra*, p. 1a. The opinion of the United States District Court is reported at 371 F. Supp. 1384 and appears in the Appendix, *infra*, p. 13a. The order of the United States District Court is unreported and appears in the Appendix, *infra*, p. 18a.

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was entered on July 8, 1974. A timely petition for rehearing *en banc* was denied on August 21, 1974. Time to file this petition for certiorari was extended by this Court until December 19, 1974, and petition was timely filed. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

1. Do federal courts have the power, pursuant to 42 U.S.C. §1983, to grant relief for unconstitutional delays in criminal trials where the right to speedy trial is asserted prospectively by a class?

STATUTORY PROVISIONS INVOLVED

New York Criminal Procedure Law provides in pertinent part as follows:

> CPL §30.30 speedy trial; time limitations
>
> 1. . . . a motion . . . must be granted where the people are not ready for trial within:
>
> (a) six months of the commencement of a criminal action wherein a defendant is accused of one or more offenses, at least one of which is a felony;
>
> * * * * *
>
> 2. . . . where a defendant has been committed to the custody of the sheriff in a criminal action he must be released on bail or on his own recognizance, . . ., if the people are not ready

for trial in that criminal action within:

> (a) ninety days from the commencement of his committment to the custody of the sheriff in a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a felony;

* * * * *

Federal Rule of Civil Procedure 23(b)(2) provides as follows:

> ". . . the party opposing the class has acted or refused to act on grounds generally applicable to the class. . . ."

42 U.S.C. §1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT VI – Jury Trial for Crimes and Procedural Rights.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial . . . .

AMENDMENT XIV – Citizenship; Privileges and Immunities; Due Process. . . .

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

In July, 1972, seven indigent pre-trial detainees incarcerated in the Brooklyn House of Detention for Men filed this action on behalf of themselves and all other detainees confined pending trial in the Supreme Court of the State of New York on their respective indictments for the alleged commission of felonies. The amended complaint sought declaratory and injunctive relief for systematic and widespread deprivation of constitutional rights. These included, *inter alia*, denial of the effective assistance of counsel, restrictions on access to the courts, failure to provide a speedy trial, coercion in obtaining guilty pleas, denial of reasonable bail and deprivation of due process and equal protection of the laws.

A motion to dismiss the complaint was denied by the District Court (Orrin G. Judd, J.) on February 27, 1973, and reported at 369 F. Supp. 180 (E.D.N.Y. 1973).[1]

---

[1] The District Court found that it had jurisdiction to hear all of the claims raised in the complaint, including the issue raised in this petition, under 28 U.S.C. §1343 and 42 U.S.C. §1983.

After extensive hearings, on May 10, 1973, the District Court found severe constitutional infirmities in the manner in which the Legal Aid Society performs its constitutionally mandated function, and granted petitioners' motion for preliminary relief. The Court of Appeals reversed, holding that the Legal Aid Society does not act under color of State law. *Wallace v. Kern*, 481 F.2d 621 (2d Cir. 1973), *cert. den.*, 414 U.S. 1135 (1974).

Subsequently, the District Court held hearings on the lengthy trial delays suffered by incarcerated persons in Kings County. The situation revealed, and the length of delay commonly suffered, are aptly summarized by the Court of Appeals, 499 F.2d at 1349:

> As of July 1973, there were over 700 persons named in indictments in the Kings County Supreme Court who had been in custody awaiting disposition of their cases for more than six months, 210 of whom had been in custody for more than a year. Lengthy pretrial confinement continued to be the rule in Kings County, despite the reform measures outlined by Justice Damiani. . . . By January, 1974, there were still 398 inmates awaiting trial who had suffered more than six months' confinement. The time lapse from the date of arrest to the date of trial in run-of-the-mill cases had been as long as 27 months. Such delays contribute to overcrowding at the House of Detention, a facility with a rated capacity of 810 inmates, but which housed an average of 1,391 inmates during 1973, and an average of 995 inmates during January 1974. (App., *infra*, p. 6a)

After the hearings, Judge Judd concluded that "[o]ver-long confinement without trial is a denial of constitutional rights." 371 F. Supp. at 1389. (App., *infra*, p. 28a.) This holding was grounded both in the Due Process Clause and in the Sixth Amendment guarantee of "a speedy and public trial," with the court noting that "speedy" may have a different meaning for an incarcerated person than for one who is free while his case is pending.

Judge Judd's decision relied heavily on the prejudice to jailed defendants from excessive pre-trial incarceration, though the Court of Appeals erroneously stated that the lower court did not consider this factor. 499 F.2d at 1350. Both Dr. Sheldon Cholst, a psychiatrist who was employed at the Brooklyn House of Detention, and Professor Bernard L. Segal testified that pre-trial detention is physically and psychologically oppressive, and invariably increases the accused's anxiety and concern, two factors considered significant by this Court in *Barker v. Wingo*, 407 U.S. 514, 532 (1972). Professor Segal further testified that the defense is necessarily impaired because the prisoner is often unable to assist counsel in preparation of a defense and that he may forego his constitutional rights in his anxiety to have the case concluded.

The District Court found that delays inherent in the Kings County judicial system, rather than the actions of accused persons, are responsible for the delays. The record amply supports this finding. The major cause of delay is the fact that the Kings County Supreme Court's resources are inadequate to cope with a large backlog of cases, despite an influx of money into the system. In 1972, only 341 out of 12,000 indictments were tried. The percentage of cases tried did not increase substantially in 1973, although the number of indictments decreased.

Also contributing to the delay is the misuse of the state's "ready rule", CPL §30.30, whereby a case need only be declared "ready" by the prosecution within the desired time period to toll the State's statutory prompt trial obligation. Further causes include inadequate record-keeping and the District Attorney's practice of calling cases for trial out of chronological order.

Compounding the constitutional violation is the failure of the state courts to provide adequate remedies when members of petitioners' class assert their rights. The District Court found that in 1972, when the Legal Aid Society brought speedy trial motions in the state appellate court in behalf of 400 of the more than 600 of its clients in jail more than six months, some bails were reduced, but in more than half the cases no trial dates were fixed. Undaunted by their lack of success, the Society brought four test cases to the New York Court of Appeals, hoping for a ruling on the problem of widespread trial delays. *People ex rel. Franklin v. Warden*, 31 N.Y.2d 498, 341 N.Y.S.2d 604, 294 N.E.2d 199 (1973). That court, rather than considering the problem of routine and chronic delay or otherwise reaching the constitutional issue, granted trial preferences for the four petitioners, a remedy which is meaningless when the deprivation affects an entire class.

Based upon its findings that conditions in the Kings County Suspreme Court violate the standards enunciated in *Barker v. Wingo, supra,* and the Due Process Clause, the District Court, on March 26, 1974, directed that for all persons who have indictments pending in Kings County, except for murder cases, and who have been incarcerated pending trial for more than six months, trial shall commence within forty-five days of submission of a written request for trial, or the indictee be released on his own recognizance. A murder indictee may submit a written

request for trial after he has been incarcerated for nine months. (App., *infra*, p. 13a.)

A motion for a stay of the order was denied by the District Court on March 29, 1974, except that a stay of the notice provision was granted pending application to the Court of Appeals for a stay of the entire order. On April 2, 1974, the Court of Appeals stayed the District Court's order and directed that the appeal be expedited. A judgment was entered on July 8, 1974, reversing and vacating the District Court order. The Court of Appeals held that a federal court may not give prospective class relief from unconstitutional delays in criminal trials and that speedy trial violations "must be determined ad hoc on a case-by-case basis." 499 F.2d at 1351. A petition for rehearing *en banc* was timely filed and denied on August 21, 1974.

An application for extension of time to file this petition was timely filed and granted on October 22, 1974.

REASONS FOR GRANTING THE WRIT

I

THE COURT OF APPEALS ERRED IN HOLDING THAT *BARKER V. WINGO* BARS A CLASS ACTION BY PRE-TRIAL DETAINEES SUFFERING FROM EXCESSIVE PERIODS OF PRE-TRIAL DETENTION.

In *Barker v. Wingo*, *supra*, this Court held that the denial of a speedy trial is to be determined by an ad hoc balancing test based on the circumstances of each case and involving four factors: length of the delay, reasons for the delay, defendant's assertion of his right, and prejudice to the defendant resulting from the delay. 407 U.S. at 530. The Court of Appeals in this case held that the

District Court ". . . failed to account for the four *Barker* factors, and it ignored the mandate to proceed on a case-by-case basis." 499 F.2d 1345.

This holding misapplies the *Barker* standard because it takes no account of the prospective nature of petitioners' claim and the relief sought. In *Barker*, the issue was whether, at the time of trial, the right to a speedy trial had been denied. The remedy sought was dismissal of the charges, the only possible remedy for the completed violation of the right. *Strunk v. United States*, 412 U.S. 434, 439-440 (1973). In that posture, strict case-by-case inquiry is required due to the severity of the remedy, and because the major harm to be evaluated in that context, *i.e.*, impairment of the defense, may vary greatly from case to case.

But the right to a speedy trial is here asserted prospectively, in order to protect the interests served by that right. The relief sought is trial rather than dismissal; and one purpose of the District Court's order was preservation of the defense so that a fair trial would be possible.

The other interests served by the Sixth Amendment guarantee include preventing undue and oppressive incarceration as well as minimizing the anxiety and prejudice resulting from public accusation. *Smith v. Hooey*, 393 U.S. 374, 378 (1969); *United States v. Ewell*, 383 U.S. 116, 120 (1966). Prospective relief is mandated to avoid such consequences, for they can never be adequately remedied in post-conviction proceedings or by dismissal at trial. The right to a speedy trial is unique in that it may be irretrievably lost by the mere passage of time.

For this reason it is a present and continuing right which may be asserted before trial in order to prevent its completed violation. A criminal defendant may enforce the

". . . affirmative constitutional obligation to bring [an accused] promptly to trial," as well as obtain a dismissal of charges after the State's failure to do so. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 490-491 (1973); see also *Smith v. Hooey*, *supra*, at 383; *Klopfer v. North Carolina*, 386 U.S. 213, 219-222 (1967).

Furthermore, the impingement on interests protected by the Sixth Amendment right is due to systemic causes and the injuries suffered are classwide. The need for strict case-by-case inquiry is not controlling where ". . . the party opposing the class has acted or refused to act on grounds generally applicable to the class. . . ." F.R. Civ. P. 23(b)(2). Moreover, as the District Court noted, "[t]he oppressive character of prolonged incarceration does not differ vitally among different defendants, and therefore is particularly appropriate for relief in a class action." 371 F. Supp. 1391.

The District Court order, contrary to the Court of Appeals' view, did not quantify the right to a speedy trial into a fixed time period, as would an order requiring dismissal of indictments after six and nine months; nor did it establish a new constitutional rule. Instead, it imposed an equitable remedy intended to prevent irreparable loss of liberty and certain prejudice to the Sixth Amendment rights of many class members. While there is no constitutional right to be tried within six months, a federal district court may use that period as the basis for equitable relief designed to protect plaintiffs' rights. This distinction was recognized by this Court in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), holding that a mathematical ratio may be used as the basis for an equitable remedy for school segregation, even though there is no substantive constitutional right to any particular degree of racial balance. The Court of Appeals' failure to

appreciate this distinction between right and remedy amounts to a failure to understand the nature and purpose of the order below. Properly understood, the six and nine month periods of the order must be evaluated as an exercise of equitable discretion as to remedy, and the proper standard of review is whether the lower court abused its discretion. On the record below, particularly as to the effects of pretrial incarceration on the detainee, 371 F. Supp. at 1388, the relief granted is conservative and cannot be considered an abuse of discretion.

II.

THE EXCESSIVE PERIODS OF PRETRIAL INCARCERATION SUFFERED BY PETITIONERS DEPRIVE THEM OF DUE PROCESS OF LAW.

Petitioners, though unconvicted and presumptively innocent, routinely suffer terms of incarceration ranging up to 27 months. 499 F.2d at 1349. They are kept in jail due to their poverty and consequent inability to post bail. The District Court held that "over-long confinement without being convicted, simply for being poor, is also a denial of due process of law." 371 F. Supp. 1389. The Court of Appeals did not comment on petitioners' due process claim in its opinion, although the issue was briefed and argued.

When government restricts a constitutional right, it must do so in the least drastic way available. *Cleveland Board of Education v. La Fleur*, 414 U.S. 632 (1974); *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Shelton v. Tucker*, 364 U.S. 479 (1960). Where the right involved is the most fundamental of all, freedom from actual imprisonment, governmental infringements must be kept within the narrowest bounds. Cf. *United States v. Thompson*, 452 F.2d 1333 (D.C. Cir., 1971), *cert. denied*, 405 U.S. 998 (1972).

The only constitutionally acceptable reason for detaining an unconvicted defendant is to assure his presence at trial, cf. *Stack v. Boyle*, 343 U.S. 1, 5 (1951); it follows that any restriction on pretrial detainees must be limited to what is necessary to accomplish that purpose. *Rhem v. Malcolm*, __F.2d __, (No. 74-2072) (2nd Cir., Nov. 8, 1974); *Brenneman v. Madigan*, 343 F. Supp. 128 (N.D. Cal., 1972).

Thus, the lower courts have held that jail conditions that are unnecessarily restrictive and oppressive deny pretrial detainees due process of law. *Rhem v. Malcolm, supra; Inmates of Suffolk County Jail v. Eisenstadt*, 494 F.2d 1196 (1st Cir. 1974); *Jones v. Metzger*, 456 F.2d 854 (6th Cir. 1972); *Inmates of Milwaukee County Jail v. Petersen*, 353 F. Supp. 1157 (D. Wis., 1973). Inadequate resources or administrative convenience will not excuse such conditions. *Hamilton v. Love*, 328 F. Supp. 1182 (E.D. Ark., 1971); *Landman v. Royster*, 333 F. Supp. 621 (E.D. Va., 1971). The loss of liberty itself is surely of more concern than the incidents of detention; if needlessly stringent jail conditions violate due process, needlessly long pretrial incarceration is *a fortiori* unconstitutional.[2] The State's failure to provide prompt trials for detained persons inflicts such excessive pretrial incarceration.

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[2] Compare also *Baldwin v. New York*, 399 U.S. 66 (1970), holding that imprisonment of six months or more *after conviction* may not be imposed without the opportunity for a trial by jury. Surely *pretrial* incarceration routinely exceeding that length of time, imposed due to an accused's inability to post bail, violates the Constitution.

The State did not and cannot assert any defensible reason for its failure to provide prompt trials and thus to alleviate the burden of pretrial punishment. In light of the harsh and drastic effects of extended pretrial detention, as shown by the record and accepted by the District Court, the relief granted was appropriate and necessary to safeguard petitioners' right to due process of law.

III.

THIS CASE RAISES CRUCIAL QUESTIONS ABOUT THE REALIZATION OF THE RIGHTS TO SPEEDY TRIAL AND DUE PROCESS FOR INDIGENT CRIMINAL DEFENDANTS IN AN URBAN JUDICIAL SYSTEM. IF THE DISTRICT COURT CANNOT FASHION PROSPECTIVE RELIEF TO PREVENT THE WHOLESALE DENIAL OF SIXTH AND FOURTEENTH AMENDMENT RIGHTS, PETITIONERS WILL BE LEFT WITHOUT A MEANINGFUL REMEDY.

This Court must clarify and reassert the present right to a speedy trial if poor people are to obtain some measure of justice in the State's criminal courts.[3] The Court of Appeals' relegation of petitioners to individual remedies in fact deprives them of any remedy at all. The fundamental nature of the speedy trial guarantee has been repeatedly recognized by this Court; a decision that respects it in form while nullifying it in fact cannot be permitted to stand.

---

[3] The enormous importance of this issue is illustrated by the fact that Congress is presently considering speedy trial legislation which would require that the trial of defendants in federal criminal cases be commenced within ninety (90) days of arrest and sixty (60) days after indictment. The Senate Bill (S. 754) was reported on favorably by the Senate Committee on the Judiciary on July 18, 1974. That bill and H.R. 17409 (filed October 16, 1974) are presently being considered by The House Committee on the Judiciary.

From the defendant's point of view, the speedy trial guarantee serves "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Barker v. Wingo, supra,* at 532. This Court has recognized that the major evils to be avoided are not associated with the eventual conduct of an accused's trial. *United States v. Marion,* 404 U.S. 307, 320 (1971). Rather, they are the opprobrium of public accusation, uncertainty of consequences, disruption of job and family.

The detrimental impact of excessive trial delay is magnified many times by incarceration. This Court noted in *Barker v. Wingo, supra,* at 532, that "The time spent in jail is simply dead time." The record below shows that it is more than "dead": it is actively destructive to the incarcerated defendant. The undisputed evidence, accepted by the District Court and not questioned by the Court of Appeals, showed that the pretrial detainee suffers not only loss of liberty but also loss of employment and destruction of family relationships. The accused person suffers extreme and excessive anxiety and concern, and becomes increasingly bitter and alienated as he is forgotten by the world outside. The suicide rate in jail is twenty-five times higher than that of the general population and tranquilizers are used extensively. The overcrowding and lack of rehabilitative, recreational or adequate medical programs exacerbate these extreme deprivations.

Moreover, the likelihood of ultimate impairment of the defense is greatly increased by long periods of pretrial detention. This Court has acknowledged that "if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense." *Barker v. Wingo, supra,* at 532-33. In addition, his ability to

communicate with his attorney is severely impaired by the difficulty of visiting clients in jail, and the result is a complete loss of confidence in his lawyer and of faith in the criminal justice system. According to the uncontroverted evidence accepted by the District Court, the pressures of prolonged incarceration ultimately result in inducement to accept a guilty plea. The right to a fair trial – or any trial at all – is violated by the facts of this case.

Societal interests as well as defendants' rights are compromised by excessive pretrial delay, as this Court acknowledged in *Barker v. Wingo, supra,* at 519-520. Excessive delay between arrest and the imposition of sentence may hinder the rehabilitation of the guilty, especially where, in effect, substantial punishment *precedes* conviction. Such pretrial punishment is an unconscionable burden on the innocent, whether they insist on a trial or plead guilty under the pressures and uncertainty of pretrial detention. The ultimate victim is respect for law and the system which administers it.

Delay contributes to the overcrowding of local jails, whose inmates are commonly afforded harsher treatment than sentenced prisoners, as the District Court observed. 371 F. Supp. at 1389; see also *Rhem v. Malcolm supra.* The jails themselves are destructive of character and of prospects for rehabilitation, and terribly expensive as well. Excessive pretrial detention also prevents the detainee from working and leads both to the loss of his productivity and to hardship and probable welfare dependency for his family.

The Court of Appeals has twice acknowledged the serious and long-standing character of the problem of trial delay in Kings County. *Thorne v. Warden,* 479 F.2d 297 (2d Cir. 1973); *United States ex rel. Frizer v. McMann,* 437

F.2d 1312 (2d Cir., *en banc*, 1971). In the case at bar it stated:

> "We have noted more than once in the past that funding, facilities and personnel in Kings County are chronically inadequate to the task of bringing criminal cases promptly to trial. . . . Lengthy pretrial confinement continues to be the rule in Kings County. . . .' 499 F.2d at 1349.

Yet in the face of this continuing crisis, the Court of Appeals' decision holds that the right to a speedy trial may be vindicated only after its completed denial in an individual case.

Under this analysis, judicial prevention of the irreparable and classwide injuries suffered by petitioners' class is impossible. There are no other remedies. Petitioners' inability to protect their right to a speedy trial is discussed and documented extensively by the District Court. 371 F. Supp. at 1389-90. Post-conviction remedies are futile to rectify the injuries caused by excessive pretrial incarceration. Individual motions are almost invariably futile, and even if successful result only in a trial preference, which only delays the trials of other members of the class. The Legal Aid Society's attempt to obtain speedy trials by filing hundreds of individual petitions resulted in a speedy trial for no one. *People ex rel. Franklin v. Warden, supra.* Class relief in the state courts is foreclosed by New York law. *Bellamy v. Judges*, 41 App. Div. 2d 196 (1st Dept.), *aff'd.*, 32 N.Y.2d 886 (1973).

An approach that does not recognize the systemic nature of the problem and formulate relief on that basis is an exercise in futility. The only legal remedy which can

protect petitioners' rights to speedy trials and due process is one which can be asserted prior to trial to prevent the violation. Thus, the District Court's order was both appropriate and necessary under the circumstances. Moreover, as a matter of policy, the relief granted by the District Court is far superior to assertion of the right as a defense, since it is preventive in nature and does not cause indictments to be dismissed without regard to guilt or innocence.

Federal habeas corpus is no substitute. The burden placed on the federal courts by post-conviction proceedings is already notorious. It is highly unrealistic to believe that the District Court could deal with all the colorably meritorious petitions that could be filed by members of petitioners' class, even if their overburdened assigned counsel could prepare and prosecute them.

It is no answer to say that federal courts "have no supervisory authority over state courts and have no power to establish rules of practice for the state courts." 499 F.2d at 1351.

Federal courts have no supervisory authority over state schools, prisons, welfare systems, police departments, or any other state institutions; but they have the power and the duty to protect constitutional rights when state agencies of any sort infringe upon them. It would be preferable for the states on their own to desegregate their schools, operate their prisons humanely, and avoid improper discrimination in their welfare systems; but when they do not, the victims of their unconstitutional practices are entitled to a federal court remedy under the Civil Rights Act.

The same principle governs the unconstitutional practices of state court systems. *Pugh v. Rainwater*, 483 F.2d 778 (5th Cir. 1973), *cert. granted, sub nom. Gerstein v. Pugh*,

94 S. Ct. 595 (1973) (class action against denial of preliminary hearings); *Conover v. Montemuro*, 477 F.2d 1073 (3rd Cir. 1973) (*en banc*) (class action against family court intake procedures); *Long v. Robinson*, 436 F.2d 1116 (4th Cir. 1971) (class action against discriminatory classification of certain youthful offenders); *Penn v. Eubanks*, 360 F. Supp. 699 (M.D. Ala., 1973) (class action against discriminatory jury selections); *Gilliard v. Carson*, 348 F. Supp. 757 (M.D. Fla., 1972); *Green v. City of Tampa*, 335 F. Supp. 293 (M.D. Fla., 1971); *Bramlett v. Paterson*, 307 F. Supp. 1311 (M.D. Fla., 1969) (class actions against denial of counsel to indigents). Any deference due the state on the particular issue of this case has been obviated by the state's default in solving the problem.

The State's tolerance of present conditions amounts to an assessment that the system in Kings County is operating constitutionally. The Court of Appeals' view of *Barker v. Wingo, supra*, precludes any relief that would preserve the rights asserted by petitioners. The drastic and irreparable effects of lengthy incarceration without a determination of guilt are broadly felt by indigent defendants in overcrowded urban judicial systems. For these reasons, it is crucial to the preservation of Sixth and Fourteenth Amendment rights that this Court review a Court of Appeals decision that is intolerable as a matter of policy as well as wrong as a matter of law.

CONCLUSION

For the reasons stated above, a writ of certiorari should be granted to review the judgment and opinion of the Second Circuit.

Respectfully submitted,

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